



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10-021,970	12/13/2001	Marcus B. Gohlke	068349.0120	4120

7590 05/09/2003

R. William Beard, Jr.  
Baker Botts L.L.P.  
910 Louisiana Street  
Houston, TX 77002-4995

EXAMINER

COE, SUSAN D

ART UNIT

PAPER NUMBER

1654

1/

DATE MAILED: 05/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

FILE 10/21/03 S.M.

Office Action Summary

Application No.

10/021,970

Applicant(s)

GOHLKE, MARCUS B.

Examiner

Susan Coe

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 5-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 5-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

- 1) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-1448)
- 2) ☐ Information Disclosure Statement(s) (PTO-1449) Paper Note(s)

- 3) ☐ Notice of Informal Patent Application (PTO-152)
- 4) ☐ Other

**DETAILED ACTION**

1. The amendment filed February 4, 2003, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 2 and 4 have been cancelled.
3. Claims 1, 3, and 5-18 are pending.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1, 3, and 5-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are considered indefinite because applicant has not defined what times are encompassed by "an extended period of time."

***Claim Rejections - 35 USC § 102***

5. Claims 1, 5, and 12-14 are rejected under 35 U.S.C. 102(e) as being anticipated by US Pat. No. 6,406,897 B1 for the reasons set forth on page 3 of the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the reference does not teach the claimed composition because the reference teaches a linked lactoferrin, beta-glucan composition, while

that both ingredients are present. The reference is considered to meet this limitation because it teaches a composition which would contain both ingredients.

***Claim Rejections - 35 USC § 103***

6. Claims 1, 5-11, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 6,406,897 B1 for the reasons set forth on pages 4 and 5 of the previous Office action.

Applicant argues against this rejection for the same reasons as for the 102(c) rejection based on this reference. Therefore, the response to these arguments can be found above in paragraph 5.

7. Claims 1, 3, and 5-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,296,464, US Pat. No. 5,783,569, and US Pat. No. 5,670,138 for the reasons set forth on page 6 of the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the claimed composition has unexpected results because the composition can be administered for long periods of time without the negative side effects that would be associated with the long term administration of each ingredient individually. However, it is difficult to assess potential unexpected results because the periods of time involved are unclear. It is not clear how long the individual ingredients can be administered before harmful side effects are seen and it is not clear how long applicant intend

to administer the claimed composition. (See, e.g., 102.2<sup>nd</sup> paragraph of the previous Office action.) Therefore, without show-

Art Unit: 1654

individual components. In addition, without the claims reflecting a clear period of time, it cannot be determined if the claims would be commiserate in scope with any unexpected results.

Therefore, the claims are still considered to be obvious based on the reasons of record.

8. No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

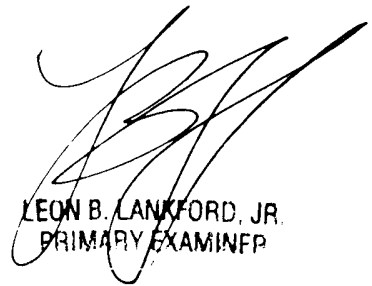
Application Control Number: 10-021,970

Page 5

Art Unit: 1654

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Susan Coe, Examiner  
May 2, 2003



LEON B. LANKFORD, JR.  
PRIMARY EXAMINER